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December 18, 2000

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Honorable Vernon L. Williams
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Joint Reply Comments of Subscribing Coal Shippers. Also enclosed is a 3.5-inch diskette containing the text of the Joint Reply Comments in WordPerfect format.

Please acknowledge receipt of the enclosed by stamping and returning to our messenger the enclosed duplicate of this letter.

Sincerely,

John LeSeur

John H. LeSeur
An Attorney for Subscribing
Coal Shippers

JHL:cef
Enclosures

cc: Parties of Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD

MAJOR RAIL CONSOLIDATION PROCEDURES	Ex Parte No. 582 (Sub-No. 1)

JOINT REPLY COMMENTS OF SUBSCRIBING COAL SHIPPERS:
WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
ALLIANT ENERGY CORPORATION,
CITY OF GRAND ISLAND, NEBRASKA,
CITY UTILITIES OF SPRINGFIELD, MISSOURI,
LAFAYETTE UTILITIES SYSTEM,
PLATTE RIVER POWER AUTHORITY,
SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT,
TEXAS MUNICIPAL POWER AGENCY and
XCEL ENERGY INC.

By: William L. Slover
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OF COUNSEL:

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Dated: December 18, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

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MAJOR RAIL CONSOLIDATION PROCEDURES	Ex Parte No. 582 (Sub-No. 1)

**JOINT REPLY COMMENTS OF SUBSCRIBING COAL SHIPPERS:
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XCEL ENERGY INC.**

SUMMARY

Subscribing Coal Shippers ("Coal Shippers") present these brief reply comments in response to the Surface Transportation Board's ("STB" or "Board") Notice of Proposed Rulemaking ("NPR") served in this docket on October 3, 2000. Coal Shippers represent a broad cross-section of utility coal shippers, including investor-owned, municipally-owned and rural electric cooperative power providers.

Herein, Coal Shippers urge the Board to reject the central thesis set forth in the large railroads' comments: the STB should make no fundamental changes in the Board's current merger rules. Coal Shippers also urge that the STB carefully consider the comments filed by all other participants in this proceeding, including large and small shippers, short line railroads, and governmental bodies. This broad consortium of diverse interests join Coal Shippers in requesting that the STB make fundamental changes in its merger rules. They also join Coal Shippers in asking the Board to implement this mandate for fundamental change by promulgating specific competition-enhancing and service failure compensation conditions.[1]

I.
REPLY TO LARGE RAILROAD COMMENTS

The nation's large railroads, and their trade association, the Association of American Railroads ("AAR"), have filed voluminous comments on the NPR. While the large railroad comments differ somewhat on the particulars, the large railroads are united in their overall position: the STB should not make any fundamental changes in its current merger rules, particularly

[1] Reference herein to "Comments" filed by parties other than Coal Shippers are comments filed by the parties in response to the NPR. Coal Shippers' citations to party names and record documents will generally follow the Abbreviations set forth in Appendix A to the NPR.

changes that would meaningfully "enhance competition" for captive rail shippers.[2] This sentiment is succinctly summarized by BNSF, which asks the STB to make only "narrow changes" in current STB merger rules. BNSF Comments at 5.

Through this shared position, the large railroads are requesting the STB to renege on its promises to the shipping public, and the courts, that a merger moratorium was necessary to allow the Board time to make "fundamental" changes in the Board's existing merger rules.[3] Coal Shippers urge the STB to reject the large railroads' request.

Fundamental change is necessary for the reasons previously articulated by the Board. The nation, for the first time in its history, is faced with the spectre of a national rail duopoly. ANPR at 4. If any major new mergers are going to be approved, it is of paramount importance that they be accompanied by meaningful competition-enhancing conditions to ameliorate duopoly (or near duopoly) competitive harms. ANPR at 7.

Similarly, the most recent rounds of major rail mergers created service crises that, as the STB itself has repeatedly acknowledged, have caused irreparable harm to the shipping public

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[2] See CN Comments at 5; UP Comments at 12; CSX Comments at 6; NS Comments at 5-6; CP Comments at 2; KCS Comments at 4; WCS Comments at 2-3; BNSF Comments at 6; and AAR Comments at 2.

[3] See Brief of Respondent Surface Transportation Board, No. 00-1115, et al., Western Coal Traffic League v. STB (D.C. Cir., filed May 19, 2000) at 4 ("STB Moratorium Case Brief").

and have cost shippers hundreds of millions of dollars. See STB Moratorium Case Brief at 4, 10-11. If any more mergers are going to be approved, it is also of paramount importance that they be accompanied by meaningful service protection provisions (including service failure compensation conditions) to ameliorate merger-caused service failures.

Coal Shippers, now, more than ever, cannot afford service failures. Throughout the country the electricity industry is suffering through generation capacity constraints. Emergency alerts have been daily occurrences in the western United States. Coal delivery disruption on top of gas and oil fuel stock shortages and high costs will inevitably lead to extraordinary electricity price spikes and rolling blackouts. See "In Crisis, California to Force Big Utilities to Supply Power," New York Times, December 14, 2000, at A.32(copy in Attachment 1).

The large railroads, of course, do not want the Board to condition future rail mergers with any meaningful competition-enhancing or service failure compensation conditions. Instead, they urge tweaking of the current merger rules. The Board should reject the large railroads' position as it is completely inconsistent with the competitive and service realities the Board must address if and when the next round of rail mergers occurs.

The large railroads also argue that STB imposition of competition-enhancing conditions "would treat railroads more harshly than any other U.S. industry ...." AAR Comments at 2. That's wrong. Competition-enhancing conditions are frequently imposed on mega-mergers in other industries. For example, two communication company giants, Time Warner and AOL, have proposed to merge. Government regulators refused to permit this merger to go forward, however, until Time Warner and AOL "signed an agreement with antitrust enforcers under which they commit to open their cable systems to Internet rivals." "What's News - Business and Finance," Wall Street Journal, Dec. 14, 2000, at A.1 (copy in Attachment 2).

II.
REPLY TO SHIPPER COMMENTS

Virtually all of the comments filed by shippers echoed, in whole or in part, Coal Shippers' prior comments. Shippers uniformly support the Board's proposal that future mergers must enhance competition but also uniformly criticize the STB for not adopting any of the specific competition-enhancing conditions sponsored by Coal Shippers, and others, in the prior rounds of comments filed in this proceeding.[4]

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[4] See CCS Comments at 7; IMPACT Comments at 16; EEI Comments at 2-3; PPL Comments at 7-12; CMA/APC Comments at 2-3; BASF Comments at 2-3; Dupont Comments at 7; Shell Comments at 9; (continued...)

Similarly, most shippers joined Coal Shippers in asking the STB to craft service failure conditions that would require merging carriers to adequately compensate shippers for post-merger service failures.[5] Shipper after shipper emphasized that without the backstop of STB-mandated compensation remedies, all service filings, "service assurance plans," etc. are mere paper exercises. Coal Shippers remind the Board that in most recent major mergers, service problems merger applicants represented would not happen, have happened.

Coal Shippers again urge the Board revise its proposed merger rules by adopting the competitive and service failure conditions, Coal Shippers previously advocated. These proposals (or similar ones) are supported by virtually all shipper participants in the proceeding.

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[4] (...continued) Williams Comments at 5; AFBF Comments at 1-2; TFI Comments at 4; NFGA Comments at 4-5; AGP Comments at 3-4; Bunge Comments at 7; IMC Global Comments at 1-2; NMA Comments at 2; AF&PA Comments at 5; Weyerhaeuser Comments at 4-6; AFRC Comments at 2; NITL Comments at 10; CURE Comments at 3-4; and ARC Comments at 1.

[5] See CCS Comments at 17; IMPACT Comments at 18; EEI Comments at 9; PPL Comments at 12-15; CMA/APC Comments at 3; Williams Comments at 6-7; NFGA Comments at 12; IMC Global Comments at 3; NMA Comments at 2; USCPTA Comments at 2; AF&PA Comments at 5; Weyerhaeuser Comments at 7-8; TIA Comments at 3; and NITL Comments at 20.

III.
REPLY TO COMMENTS FILED BY SHORT LINE RAILROADS AND GOVERNMENT ENTITIES

Short line railroad commentators generally support the "Short Line and Regional Railroad Bill of Rights."[6] That Bill of Rights contains proposed conditions (e.g., paper barrier relief) that are similar to those forwarded by Coal Shippers. Coal Shippers join the short line railroad community in asking the STB to require merging carriers to eliminate unreasonable paper barriers as a condition precedent to the approval of any new mergers.

Many governmental agencies participating in this proceeding filed comments asking the STB to provide competition-enhancing and service failure remedies similar to those Coal Shippers have advocated throughout the proceeding.[7] Though there are differences between the positions advocated by the United States Department of Transportation, the United States Department of Agriculture, and other participating governmental bodies (both between themselves and between the positions advocated here by Coal Shippers), the vast majority of the governmental agencies' comments side with the general positions advocated by the shipping community (e.g., asking the STB to promulgate specific

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[6] See, e.g., ASLRRA Comments at 2-4; FMRC Comments at 2.

[7] See, e.g., DOT Comments at 3,9; USDA Comments at 13, 15-19; NDPSC Comments at 2-3; CPUC Comments at 1-6; KDOT Comments at 1-2; New York Comments at 5-6; ODOT Comments at 6,8,11.

pro-competitive competition enhancing conditions and service failure compensation conditions) not the status quo positions advocated by the large railroads.

CONCLUSION

Coal Shippers request the STB to adhere to its promise to make fundamental changes in its merger rules by adopting the competition and service conditions Coal Shippers proposed in their prior comments in this proceeding.

Respectfully submitted,

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Dated: December 18, 2000

December 14, 2000

By JAMES STERNGOLD

LOS ANGELES, Dec. 13 California's power crisis deepened today as some big electricity generating companies refused to sell power to the state's financially ailing utilities, prompting Energy Secretary Bill Richardson to say that he would invoke rarely used emergency powers and force them to ship the desperately needed power.

Under the measures, about a dozen power producers in the West and Northwest would have to provide power to California's utilities at a price the Federal Energy Regulatory Commission would determine.

Mr. Richardson, backed by Gov. Gray Davis of California, said the price would be fair, but, he added, "I will not allow them to unjustly profit from these conditions."

The day's events suggested that a sudden cascade of financial and market developments were threatening the entire power system in California and may have spelled the doom of the market's short-lived experiment with deregulation. It was a harsh blow to those who had backed the state's pioneering, and now disastrous, energy deregulation plan, which was supposed to have been a boon to consumers.

Prices have been skyrocketing this year because of severe shortages, and the system has been barely fending off rolling blackouts, which loomed here again this afternoon.

Now several of the state's largest utilities, like Southern California Edison and Pacific Gas and Electric, have said they face bankruptcy if something is not done to bring down the unprecedented prices they are being forced to pay for their power on the wholesale market.

For instance, a Pacific Gas and Electric spokesman said the company had been paying as much as 25 cents a kilowatt-hour for power that it is selling to customers, by law, at about 5 cents a kilowatt-hour.

Because of the losses they are sustaining, the utilities have had their credit ratings downgraded sharply, prompting some of the power generators to refuse to sell them electricity out of concern the companies might never pay for it.

Adding to the problems, the organization that was created to operate the power supply system, the Independent System Operator, declared a Stage 2 alert, which means that it had moved dangerously close to running out of power. In the afternoon, the organization said it might be edging toward a Stage 3 alert, when rolling blackouts would have been required. A Stage 2 alert means that the system has only 5 percent more power than is being used, a low margin of safety. The Stage 3 alert means the margin is down to 1.5 percent, which requires utilities to shut down blocks in their grids for one hour at a time.

The state had its first Stage 3 alert last Thursday and just managed to avoid blackouts by shutting down some large state-run pump stations.

Some areas would not be affected. Cities like Los Angeles and Sacramento, for instance, have municipal power companies with their own ample generating capacity. Los Angeles' Department of Water and Power said today that it was selling surpluses to other utilities.

After the crisis-like atmosphere that prevailed throughout the day, the chairman of one of the state's largest utilities reversed his earlier stand and declared deregulation a disaster that had to be ended quickly.

"This situation is not sustainable," said the official, John E. Bryson, of Edison International, the parent of Southern California Edison. "The new market structure is broken and must be discarded."

He added that the company, which had already been forced to pay more than $3.5 billion for its power above what it has been able to charge customers, might have to ration power to its customers in the southern portion of the state.

Jan Smutny-Jones, the executive director of the Independent Energy Producers Association, which represents most of the state's power generating companies, denied that his members were price gouging and said that an unfortunate series of events had brought about the crisis. These included, he said, soaring prices for natural gas, which is used at many big generating plants, and the fact that many plants are shut down for repairs or other problems.

AOL AND TIME WARNER cleared the way for approval of their $111 billion combination, as they signed an agreement with antitrust enforcers under which they commit to open their cable systems to Internet rivals.

AOL and Time Warner Pledge Cable Access to Ease FTC Fears

By JOHN R. WILKE
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- The chief executives of America Online Inc. and Time Warner Inc. Wednesday night signed a wide-ranging agreement with federal antitrust enforcers under which they commit to open their cable systems across the nation to Internet competitors, clearing the way for approval of the companies' long-delayed $111 billion combination.

With last-minute concessions that followed months of wrangling, the Federal Trade Commission is moving toward a vote in favor of the deal Thursday, people close to the deliberations said. In a closed meeting scheduled to begin at 11 a.m., FTC staff are expected to tell the five-member commission that the agreement will help protect competition in the fast-growing market for high-speed Internet service, these people said.

While some commissioners had lingering doubts about the deal, the concessions from the companies now appear to make its approval likely, the people said.

The agreement, if accepted by the commission, would mark a major victory for the FTC that could help shape the future of competition on the Internet. It goes far beyond concessions the companies first offered after AOL's proposed acquisition of Time Warner was announced in January. It also marks the end of an extraordinary showdown in which the commission had made clear that it was prepared to go to court to block the deal over concern that the combination of AOL, the world's largest online service, and Time Warner, one of the biggest media conglomerates, could dominate the Internet.

Size Instills Fear

Time Warner dominates cable service in scores of major cities, serving 20 million U.S. households, second only to AT&T Corp. in the cable industry. The New York company also owns a vast stable of news and entertainment properties, ranging from CNN, Warner Bros. and HBO to scores of leading magazines, including Sports Illustrated, People, Fortune and the venerable flagship, Time.

AOL has nearly 29 million subscribers to its online services, and pioneered instant messaging and other innovations. But critics say the Dulles, Va., company is pushing the wide-open Internet toward a more restricted model -- called the "walled garden" -- in which subscribers are steered to AOL-affiliated content and services.

Small Internet services, consumer groups and the American Civil Liberties Union Wednesday opposed the merger, saying the vast scope of the deal could restrict free speech and alter the fundamentally open architecture of the Internet.

Jeff Chester, director of the Center for Media Education, a Washington consumer-advocacy group, urged that any settlement provide open interconnections for all Internet services, including small and midsize services, and warned that AOL was building an "Internet Lite" that denied the richness and vast resources of the Internet to its subscribers.

Competitive Safeguards

Some of the critics' concerns could be answered Thursday, when FTC officials are expected to detail the agreement signed by Stephen Case of AOL and Gerald Levin of Time Warner.

The accord requires that at least one AOL competitor be signed on to offer high-speed cable Internet service in cities served by Time Warner before AOL itself can offer service via those lines, people briefed on its terms have said. In most of those cities, Time Warner must open its lines to two more online-service rivals within 90 days, and -- in a concession added Wednesday -- as many as three more must be added after that unless technological barriers would prevent it. If these terms aren't met, AOL risks civil sanctions for violating the pact, which will have the force of a court order if approved by the commission.

The staff agreement also imposes nondiscrimination provisions, and requires AOL not to abandon high-speed digital services offered by telephone companies in cities where Time Warner controls cable lines, in order to protect a second important distribution channel for high-speed Internet services. But the deal doesn't require AOL to sell its nonvoting stake in DirecTV, a service owned by General Motors Corp. unit Hughes Electronics Corp., which represents a third major pipeline for high-speed "broadband" Internet service.

Among other last-minute changes to the settlement deal is a reporting provision that requires AOL to inform the FTC of any complaints from Internet and interactive-television competitors that they are unable to obtain access to Time Warner's online news and entertainment on reasonable terms. This addresses a concern held by some FTC commissioners that Time Warner would favor AOL with preferred access to Time Warner content.

The companies also agreed to a market-opening provision that requires them to give AOL's competitors any favorable contract terms that AOL itself wins from other cable companies. In other words, if AOL receives a lower price or better terms to be carried on the many cable systems outside Time Warner's service areas, AOL must offer those same terms to Internet providers carried by Time Warner, people close to the deliberations said.

New Details of EarthLink Pact

In its negotiations with AOL and Time Warner, the FTC demanded that in addition to agreeing to these terms, Time Warner must forge a contract with a major national Internet-service provider before the agency would approve the combination. Time Warner announced such a deal last month with EarthLink Inc. of Atlanta.

New details of that contract emerged Wednesday night showing it would offer lower prices for wholesale Internet access than most phone companies charge for similar wholesale service. The per-line cost for EarthLink works out to about $27 a month, which is as good or better than most phone-company fees; in addition, Time Warner agreed to hook up customers free of charge and provide modems and other gear, people briefed on the terms said.

The EarthLink contract gives Time Warner a share of incremental advertising and electronic-commerce revenue, but only if it surpasses a high threshold, these people said. EarthLink would have to earn about four times more advertising and e-commerce revenue than it now does to be required to share any of it with Time Warner, the people said.

Under provisions of the proposed FTC agreement, Time Warner and AOL must offer other Internet services in Time Warner cities terms equal to -- or better than -- those given to EarthLink. Thus, smaller regional Internet services, which have been sharply critical of the merger, wouldn't be required to share advertising revenue with Time Warner unless they grew many times larger, these people said.

If it is approved by the FTC, AOL's acquisition of Time Warner will then be reviewed by the Federal Communications Commission, whose chairman, William Kennard, has said it can be completed by year end. The FCC is expected to seek only modest further conditions, such as assurances that AOL will move to open its wildly popular instant-messaging systems to competitors, including Microsoft Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2000, I have served a copy of the foregoing Joint Reply Comments of Subscribing Coal Shippers on all persons designated as a Party of Record in this proceeding by postage pre-paid, first-class United States mail.

John H. LeSeur
An Attorney for Subscribing
Coal Shippers